

Google Settlement Online Panel

Mary Robinette Kowal



Welcome to the SWFA's online panel on the Google Book Settlement. The deadline for opting-out is January 28, 2010 and since many authors are still on the fence about what to do, our hope is that this conversation will help you to make a choice that best suits your writing career.

At 11:30 EST we will be opening the forum to questions from the audience. If you have not already read the [Forum Discussion Guidelines](#) and [How do I participate in the Google Settlement panel?](#) I encourage you to do so.

We're going to start today by introducing having our panelists introduce themselves and give a brief opening statement.

I am Mary Robinette Kowal and have served as SFWA's secretary for the past two years and will be the moderator during this discussion.

Paul Aiken

Good morning, everyone.

In December of 2004, Google announced that it would scan millions of copyright-protected books and make those scans available to users of the Google search engine in "snippet" form. Google would profit from the display of those snippets by selling ads. Google also planned to give to university libraries these scans. We sued Google in 2005 in order to assert authors' rights to control those scans.

In the course of the litigation, we proposed a settlement. Under the settlement, rightsholders would gain control of the scans of their books and would be empowered to instruct Google to display, hide or remove their scans.

Our proposal also allowed for the creation of an entirely new market for out-of-print books. This would allow for the display of out-of-print books (unless the author or publisher of the book declined) in a handful of ways, with 63% of the revenues going to the rightsholders through a new non-profit organization, the Book Rights Registry. The Book Rights Registry will be controlled solely by authors and publishers (not Google) and will charge an administrative fee to cover its costs.

The creation of this new market was key to getting a settlement and will be a new source of revenues for authors and publishers. Through the settlement, authors will be able to decide whether to take advantage of this market or not.

Rather than type out a more detailed description of the settlement, I'd like to encourage people to go to this overview:

<http://authorsguild.org/advocacy/articles/amended-settlement-filed-in-authors-guild.html>

Lou Anders



Good morning all,
I'm Lou Anders. I'm the editorial director of Pyr books (<http://www.pyrsf.com/index.html>), the science fiction and fantasy imprint of Prometheus Books (Pyr will be five years old in March, yay!). I'm also the editor of nine anthologies, and a former journalist with over 500 articles published in over 100 magazines. I'm a nonfiction author and short story writer as well, a former playwright and screenwriter too. So, in terms of my "relationship" with the Google Settlement - I've written across several media that are affected, most notably nonfiction.

Last edited by [Lou Anders](#) on Thu Jan 21, 2010 12:19 pm, edited 1 time in total.

Michael Capobianco



Good morning.

My name is Michael Capobianco. I've served three terms as SFWA President, the last from 2007-2008, and I'm directly affected by the Google Settlement in that I am a rightsholder of five out-of-print, rights reverted books. That makes me a member of the author sub-class. I'm not entirely sure if I have any inserts affected, since they were not independently registered with the Copyright Office. I have chosen to opt out of the Settlement. Some of SFWA's response to the settlement has been delegated to me by the current President, Russell Davis, and I helped arrange a successful panel on the settlement that took place yesterday, and will be viewable on the web in the next couple of days.

Charlie Stross



Hi. I'm Charlie Stross. I'm a full-time novelist resident in Edinburgh, Scotland, published in the UK and USA (and in translation in about a dozen other languages). I've got about fifteen books in print at present. My US publishers are Ace and Tor; my UK publisher is Orbit. Further details here:

<http://www.antipope.org/charlie/blog-static/fiction/faq.html>

I'm unhappy about the Google Book Settlement; however, after seeking advice from my publishers and my agents, I have reluctantly opted in to the settlement. I'm pretty sure I'm here as an example of a cheese-eating surrender monkey. (Please

don't throw any rotten fruit, m'kay?)

Note that I don't live in North America and I'm not American. This skews my perspective somewhat.

I'm not going to rehash the arguments over whether Google have acted lawfully or otherwise. My reason for opting in is purely pragmatic: from where I stand, I don't see any practical alternative.

By opting out of the settlement, I would be reserving the right to sue, in a foreign court, a foreign multinational with annual revenue of \$20.5Bn. I certainly don't have the financial resources to go head-to-head with them on my own, and I am unsure of my ability to participate in any US-based class action lawsuits against Google. Opting out and pursuing action looks like a recipe for spending lots of money on legal counsel for scant -- or no -- reward. QED.

What I *can* hope for is that other parties with more clout -- the French and German governments, for example, or the major publishers, or the US Department of Justice -- can blunt Google's assault on IP rights while bringing forward primary legislation to deal with the orphan works problem.

(I'd like to note in passing that we aren't the only targets of Google's quest to put all available data online -- whether they have rights to it or not -- and to monetize it for themselves via advertising.)

Lynne Thomas



Good morning.

I am the Head of Rare Books and Special Collections at Northern Illinois University in Dekalb, IL. I have been an academic librarian for 11 years. I work closely with over 40 SFWA authors affected by the settlement as their archivist. (More information about the SFWA collections at NIU can be found here: <http://www.ulib.niu.edu/rarebooks/sciencefiction.cfm>.)

I'm also an academic author (a class of authors that is excluded from the settlement itself, over the objections of the American Library Association, the Association of Research Libraries, and the Association of College and Research Libraries). My opinions are my own, but are based on my understanding of the responses of these library organizations to the settlement.

Steven Popkes

Question: How do reprints get handled by the google settlement? For example, an out of print book is scanned and put on line. At a later date, a reprint of the book is contemplated. What happens to the book on line? What rights does an author have

to reprint a book that is now on line?

Mary Robinette Kowal



Thank you all. One thing I would like to encourage our guests to do is to click on the links that the panelists provide. There's a lot of information out there.

It seems as though one of the points of conflict for many writers is the balance between feeling as though the idea of the Book Registry is wonderful for the public good but that Google has done something illegal and should not benefit from it. Do any of you have an opinion on that?

Michael Capobianco



I don't think if the settlement is approved, it could be described as "illegal." It's certainly an audacious and unprecedented use of the class action process, and it stands copyright on its head, but its not illegal if a court of law approves it and no appeals are successful.

Lou Anders



The idea of a universal library is wonderful and something many science fiction authors and fans have dreamed about all their lives. But I'm very disturbed by any organization or endeavor that utilizes an opt-out strategy over an opt-in. I don't even like it on websites that make me unclick their right to spam me rather than choose to click, so I certainly don't like it here. Since they've made orphaned works a key issue, isn't it fair to assume that a majority of rights holders of orphaned works -- or at least a significant percentage -- aren't from the demographic most likely to be online and savvy enough to know their rights as copyright holders are being negotiated away by organizations that may not even legally represent them? I'm not a member of any professional guild at present (though I was once ordained by the Universal Life Church of Modesto California without even asking to be-- pretty good for an agnostic), so why is the onus on me to scramble to protect rights that were previously guaranteed?

Paul Aiken

We agree that Google has infringed copyright. That's why we sued them. At the end of the day, however, we want authors to make money from their works -- that's the point of copyright. Settling in a manner that allows authors to earn more money, while retaining control of their works makes sense from a hardheaded business perspective.

In settling, we were focused on what's best for authors. Significant new markets are good for authors.

Google does benefit, too. But we'd rather not cut off our nose to spite our (collective) face.

Lou Anders



I like this quote from Jay Lake: "The Google Books settlement inverts the entire modern history of copyright, moving licensing from something controlled by the author (or other copyright holder) into something which can in effect be homesteaded by any entity large enough to not be concerned with individual lawsuits for copyright violation."

<http://jaylake.livejournal.com/1783372.html>

Charlie Stross



Mary Robinette Kowal wrote:

... the balance between feeling as though the idea of the Book Registry is wonderful for the public good but that Google has done something illegal and should not benefit from it.

The need for the Book Registry arises because our current model of copyright -- which we as writers depend on for remuneration -- is regrettably broken in a number of ways.

Right now we've got copyright for life plus 70 years.

This is, I would argue, excessive. Roughly 95% of all authors' works fall out of print within 5 years of their deaths, and *stay that way*. This sets us up for the orphan works problem -- after 50 years the copyright holder of a given work may be very hard to trace indeed (unless it's Disney).

However the copyright duration (and copyright model) is locked in via the Berne Convention and other treaties, so that significantly amending it would require multilateral international agreement. Worse: the large media organizations (such as Disney) have a vested interest in extending the duration of corporate copyrights.

Something like the Book Registry is long overdue and very useful indeed. But we shouldn't necessarily be thanking Google for it; all Google did was make it glaringly necessary by embarking on a campaign of systematic copyright violation. And the opt-out model sticks in my throat.

Paul Aiken

Without the opt-out mechanism, we couldn't get the critical mass needed to get the ball rolling: there would be no new institutional subscription market for out-of-print works.

It's annoying to have to claim your work to exercise your rights under the settlement, but without that, authors would have fewer opportunities to earn money. We'd like authors to have that opportunity.

Lynne Thomas



Pragmatically, the idea of having one-stop-shopping for copyright clearance sounds great--it means much less hassle for my patrons, for instance, when trying to do reprints or get permissions.

I'm a bit nervous, however, about the possibility that this "universal library" will not be very universal. Contrary to popular belief, not everyone in the United States has consistent internet access.

It also seems a bit odd to me that the onus is on the copyright holders, rather than on those seeking reproduction or access, and that copyright law is essentially being re-written by one corporation, rather than Congress.

Lou Anders

An articular summation from Cory Docotor: "The Authors Guild -- which represents a measly 8000 writers -- brought a class action against Google on behalf of all literary copyright holders, even the authors of the millions of "orphan works" whose rightsholders can't be located. Once that class was certified, whatever deal Google struck with the class became binding on every work of literature ever produced. The



odds are that this feat won't ever be repeated, which means that Google is the only company in the world that will have a clean, legal way of offering all these books in search results.

The Authors Guild and the American Association of Publishers (who took part in the settlement) totally missed the real risk of Google Book Search: they were worried about some notional income from advertising that they might miss out on. But the real risk is that Google could end up as the sole source of ultimate power in book discovery, distribution and sales. As the only legal place where all books can be searched, Google gets enormous market power: the structure of their search algorithm can make bestsellers or banish books to obscurity. The leverage they attain over publishing and authors through this settlement is incalculable."

<http://www.boingboing.net/2009/04/17/google-book-search-s-1.html>

Paul Aiken

The so-called orphan works problem has been wildly overstated. Overseas organizations that license photocopy rights on an opt-out basis (that's the standard way it's done outside the U.S.) have a great deal of success in locating out-of-print authors. Upwards of 90%.

Here, the Authors Registry has about an 85% success rate.

The Book Rights Registry will have the job of locating authors it has money for who haven't come forward. All evidence from prior efforts is that it will be largely successful.

Mary Robinette Kowal



How real is the danger that Google will have a monopoly on this?

Charlie Stross



*Lynne Thomas wrote:
I'm a bit nervous, however, about the possibility that this "universal library" will not be very universal. Contrary to popular belief, not everyone in the United States has consistent internet access.*

Also contrary to popular belief, this settlement affects a lot more than the United States -- in coming to a globally applicable settlement with the Authors Guild, Google have implicitly decided to extend US jurisdiction to copyrights worldwide (as in: they've decided that the GBS gives them *global* clearance to digitize books). It's interesting to note what [the French courts think of this](#).

Paul Aiken

We don't agree with Cory Doctorow's views.

The future of book publishing won't hinge on the display of out-of-print library books. It's useful for research, of course, but in-print books will continue to dominate the market.

No publisher would have agreed to this settlement if they thought otherwise.

Michael Capobianco



Don't get me started on the Authors Registry, Paul. 🙄

Before we go any further, I want to thank Paul Aiken again for speaking yesterday to what was in some respects a hostile crowd. Although the video of the panel isn't online yet, there's a very good summary by Laura Anne Gilman at <http://suricattus.livejournal.com/1195103.html>.

Paul Aiken

Regarding reprints: An author would simply instruct Google, through the author's rights management screen at the Book Rights Registry, to turn off all displays. The author then could grant traditional exclusive rights to the reprinting publisher.

Lynne Thomas



I beg to differ. According to the American Library Association, the Association for College and Research Libraries, and the Association of Research Libraries, "academic authors wrote the vast majority of the books Google will include in its database," specifically in reference to orphaned works. Those authors were not represented in the settlement in any way. They are also notoriously difficult to locate for things like copyright clearance, if my 6 years of trying to help scholars get copyright clearance for academic works is any indication.

This is the response of those three organizations:

<http://www.arl.org/bm~doc/antitrustdivasa-final.pdf>

Michael Capobianco



One of the things that struck me yesterday was that, although the settlement only covers out of print works, there are quite a lot of rights that are transferred to publishers. I hadn't thought about this before because all of my out of print works were quickly reverted when they went OOP. In fact, one of them, *Iris*, which I wrote with William Barton, was reverted from Bantam, resold to HarperCollins, and has now been reverted once again. What occurred to me is how this settlement makes it even more important to revert your book when they go out of print. If you haven't reverted your rights, there's a very good chance that your publisher will try to horn in on your Google money. Take the \$60 paid out for works that Google scanned prior to May of last year. If you own your rights, you get \$60; if the publisher claims that, according to the arcane rules of the settlement, they're still a rightsholder, optimistically you get \$15. Pretty big difference, so, even though there are provisions in the settlement to create a kind of quasi-reversion, if the publisher contests it, you've got to prove that the publisher is wrong. Moral: Revert your rights!

Mary Robinette Kowal

This is an excellent point to segue.

I'm going to go ahead and open the floor to questions from the audience at this point. So we can deal with some of the practicalities for working writers.



We have a question from Steven Popkes, one of our active members, who asks, "Question: How do reprints get handled by the google settlement? For example, an out of print book is scanned and put on line. At a later date, a reprint of the book is contemplated. What happens to the book on line? What rights does an author have to reprint a book that is now on line?"

Paul Aiken

The people at that forum seemed to have their minds made up. Lots of anger at Google. Which is understandable, of course, but it won't put any money in your wallet.

I read that summary -- lots of editorializing by a settlement opponent.

And, c'mon, I told everyone I had to go to my kids' piano recital!

Lynne Thomas



Mary Robinette Kowal wrote:

How real is the danger that Google will have a monopoly on this?

In libraries, the danger is rather real. There is no other competition for such a registry, and the library world does not have the resources to build one on the scale that Google has done anytime soon. Google had a 5 year head start. In terms of market share for libraries, that is basically a monopoly, since exceedingly few libraries will be able to afford to subscribe to more than one service.

Paul Aiken

Michael, I agree that it's important to get your rights back. However, there's no way an author of an out-of-print book that's entitled to a cash payment would get only \$15. (That's a minor point.)

Mary Robinette Kowal



Thanks, Lynne.

Michael Capobianco



Paul, I think one of the things you have underestimated is how important non-monetary considerations are to a lot of writers, and how they feel this has undermined their rights as an author. They want respect as well as money.

Peter West

Paul Aiken wrote:

The Book Rights Registry will be controlled solely by authors and publishers (not Google) and will charge an administrative fee to cover its costs.

I would like to ask for further clarification on the "administrative fee" for the Book Rights Registry. Could someone please explain to me a little more about this fee (amount, subscription-based or one-time)? Thank you!

Cheers!
~ Peter West

Andrew Burt

Hi everyone, good to meet or see you again.

Is there any provision in the settlement to alter/update its terms?

The reason I ask is that the future holds a lot of unknowns (e.g., who foresaw the Kindle 10 years ago?). Thus, while copyright law could be changed by legislators as needed to keep up (admittedly a slow process, but at least possible), can this agreement likewise be updated as conditions change and unforeseen things arise? Even something as simple as altering the 63/37 revenue split, if that becomes out of the ordinary. Or if some new technology comes along we can't imagine and we find the current wording lets the horses out of the corral somehow (just as the very definition of "book" was at issue in the Random House ebook situation.)

Charlie Stross



Lynne Thomas wrote:

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I'm not convinced; there's [Europeana](#), for example, a large-scale EU-funded project to digitize and make available contents from a variety of galleries, museums, and libraries. "The idea for Europeana came from a letter to the Presidency of Council and to the Commission on 28 April 2005. Six Heads of State and Government suggested the creation of a virtual European library, aiming to make Europe's cultural and scientific resources accessible for all."

It's still being built and doesn't have the broad scope of Google's virtual library as yet (only 6 million works online so far), but similar government-pushed initiatives could certainly prove workable.

Last edited by [Charlie Stross](#) on Thu Jan 21, 2010 12:52 pm, edited 1 time in total.

Michael Capobianco



*Paul Aiken wrote:
Michael, I agree that it's important to get your rights back. However, there's no way an author of an out-of-print book that's entitled to a cash payment would get only \$15. (That's a minor point.)*

I may have misread the settlement, but my understanding is, if a publisher claims to be a rightsholder, the \$60 is split evenly, then the author's share is paid to the author according to the rights-split in their contract, which would be 50% of the \$30. And, if the book hasn't earned out, the author gets zip - a big fat 0.

Paul Aiken

Lynne, the Authors Guild counts many academic authors as members. Even academic authors want their out-of-print works available, so long as they have control. And if they believe information wants to be free, they can charge \$0 for users to view the entirety of their works. They can even use Creative Commons licenses.

Regarding the "monopoly": all uses are non-exclusive. Authors sign up with the Registry on a non-exclusive basis (unlike, say, ASCAP or BMI). The Registry's agreement with Google is nonexclusive. As the Registry locates more and more rightsholders, more and more rightsholders will be able to authorize others to undertake projects similar to Google's.

Lou Anders



*Paul Aiken wrote:
Regarding reprints: An author would simply instruct Google, through the author's rights management screen at the Book Rights Registry, to turn off all displays. The author then could grant traditional exclusive rights to the reprinting publisher.*

Speaking as an editor, I doubt seriously that I would consider reprinting a work that had already been displayed online for any length of time. However, I should say in fairness that we don't do many reprints these days...

Paul Aiken

Michael, if the book is out-of-print and rights haven't reverted, the least an author could receive would be \$30 for the digitization payment. Unearned advances won't factor in.

Likewise, for new money that comes in from subscription and online purchases, the least the author would receive is 50%. (You shouldn't opt out.)

Lynne Thomas



Charlie Stross wrote:

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It's still being built and doesn't have the broad scope of Google's virtual library as yet (only 6 million works online so far), but similar government-pushed initiatives could certainly prove workable.

While they could indeed be workable, they are only made so through massive appropriations to major libraries (i.e. national libraries, Ivy League and Flagship State Universities). Those appropriations, in our current economy, have dried up. Given how long it takes for librarians to agree on standards for anything (and we will insist upon standards, and have lots of meetings about them), we could be talking decades before there is another database that can really compete on a level playing field.

Mary Robinette Kowal



I would just like to remind our panelists to keep an eye out for audience questions.

Paul Aiken

Lou, Your view isn't shared by many in the publishing industry. In-print books are displayed all the time online (Amazon, Google Partner Program). More of this is certainly coming in the future. Of course publishers will republish works currently in print when they go out of print. Especially if the Google program shows -- with real data -- that there's a demand for the book.

Michael Capobianco



*Paul Aiken wrote:
Michael, if the book is out-of-print and rights haven't reverted, the least an author could receive would be \$30 for the digitization payment. Unearned advances won't factor in.*

Likewise, for new money that comes in from subscription and online purchases, the least the author would receive is 50%. (You shouldn't opt out.)

I didn't see that in the settlement, and it makes a big difference. At your leisure, if you could point me to where it says that, I'd be appreciative.

Lynne Thomas



Paul Aiken wrote:

Lynne, the Authors Guild counts many academic authors as members. Even academic authors want their out-of-print works available, so long as they have control. And if they believe information wants to be free, they can charge \$0 for users to view the entirety of their works. They can even use Creative Commons licenses.

Regarding the "monopoly": all uses are non-exclusive. Authors sign up with the Registry on a non-exclusive basis (unlike, say, ASCAP or BMI). The Registry's agreement with Google is nonexclusive. As the Registry locates more and more rightsholders, more and more rightsholders will be able to authorize others to undertake projects similar to Google's.

I understand the non-exclusivity. I'm just arguing that the vast majority of the academic authors (not counting the small percentage of those that are really involved in this particular discussion) involved are *unlikely to make the effort* to get their materials included in other venues if they are included in the Google Books registry. While it's not an active attempt at monopoly, the net result is similar to creating one.

We're still trying to get the bulk of our faculty to understand that "open access" does not mean "lack of peer review." Creative commons licensing may be available, but there's no guarantee that it will be used. Inertia is a powerful force.

Last edited by [Lynne Thomas](#) on Thu Jan 21, 2010 1:02 pm, edited 1 time in total.

Lou Anders



I may have misspoken. Partial online samples wouldn't put us off a reprint. In fact, we have a sizable collection of excerpts here:
<http://www.pyrsf.com/SampleChapters.html>

Mary Robinette Kowal



Paul, I have an audience question that I would really love it if you could tackle.

Peter West wrote:

I would like to ask for further clarification on the "administrative fee" for the Book Rights Registry. Could someone please explain to me a little more about this fee (amount, subscription-based or one-time)? Thank you!

Charlie Stross



Lou Anders wrote:

I may have misspoken. Partial online samples wouldn't put us off a reprint. In fact, we have a sizable collection of excerpts here:

<http://www.pyrsf.com/SampleChapters.html>

Lou, with respect, Pyr pursues a very specific publishing model -- original hardcover/trade paperback works. There are other business models for publishers to pursue. If nothing else, as Cory Doctorow points out, books are *physical cultural artefacts*; no degree of online availability is going to do much to affect the value of a limited-edition letterpress gilt-trimmed autographed edition with author's ephemera and a new foreword, for example. It may even help sell it indirectly. Obviously this isn't *your* business model, but we should bear in mind that the term "publisher" covers a multitude of different sins ... 😊

Paul Aiken

Lynne Thomas wrote:

Pragmatically, the idea of having one-stop-shopping for copyright clearance sounds great--it means much less hassle for my patrons, for instance, when trying to do reprints or get permissions.

I'm a bit nervous, however, about the possibility that this "universal library" will not be very universal. Contrary to popular belief, not everyone in the United States has consistent internet access.

It also seems a bit odd to me that the onus is on the copyright holders, rather than on those seeking reproduction or access, and that copyright law is essentially being re-written by one corporation, rather than Congress.

Not everyone has Internet access, it's true. But nearly every library does. So long as public libraries take advantage of the offer, every public library will have a terminal for public access to this database of out-of-print books.

Copyright law isn't being re-written, and Google certainly didn't do this by itself. The public benefits of this settlement are enormous.

Lou Anders



I stand doubly corrected.

Charlie Stross



Peter West wrote:

I would like to ask for further clarification on the "administrative fee" for the Book Rights Registry. Could someone please explain to me a little more about this fee (amount, subscription-based or one-time)? Thank you!

From [the FAQ](#):

Quote:

How will the Registry be funded?

To fund the establishment and initial operations of the Registry, and to pay for the costs of the Class Notice Program and claims administration costs, Google agreed to pay US \$34.5 million, of which Google has already paid \$12 million. On an ongoing basis, the Registry will be funded by taking an administrative fee as a percentage of revenues received from Google.

(No actual figure for the percentage cut is specified, which fact does not fill me with joy.)

Michael Capobianco



I hope everyone in the audience will make a note that the deadline to opt out of the settlement in January 28, and, if you don't opt out, you're in, and subject to the rules of the settlement. There will be other chances to manage your books or remove them, but Jan. 28th is your last chance to tell the Authors Guild and Google that you want no part of this.

Lynne Thomas



Paul Aiken wrote:

Not everyone has Internet access, it's true. But nearly every library does. So long as public libraries take advantage of the offer, every public library will have a terminal for public access to this database of out-of-print books.

Copyright law isn't being re-written, and Google certainly didn't do this by itself. The public benefits of this settlement are enormous.

I have great difficulty seeing the benefit of this settlement to either public or academic libraries, or by extension, the public(s) that they serve. I fail to see enough oversight being built into the settlement to keep libraries from being price-gouged over time.

“Fully participating” libraries get sweetheart subscription deals (25 years for free in the case of Michigan’s deal) in exchange for providing Google with access to their books for scanning. Thus, large research libraries with large collections and more resources are set even further apart from research libraries with smaller collections (like mine), which is not conducive to the equitable sharing of information that is often produced by publicly funded academics. Libraries are being tantalized with access to a large collection of books that will, over time, become prohibitively expensive to subscribe to if the history of this particular funding model is any indication. **The one or two “free terminals” provided in the settlement will not be sufficient for any relatively large academic or public community;** our users will expect us to subscribe for campus-wide or large urban system-wide access.

This settlement will likely end up doing to electronic books what making scholarly journals electronic has done to paper periodicals, which is to raise the prices so much that they become prohibitive, despite the purported intent to base pricing upon “what the market can reasonably bear,” (also one of the Settlement’s pricing

criteria). That understanding of “reasonable” is wildly skewed, and does not reflect the realities of library funding.

20 years ago, academic libraries spent from 50-80% (depending on the library) of their budgets on books, and the rest on serials (periodicals/scholarly journals). Now, most libraries spend 80-90% of their budgets on electronic serials (periodicals/scholarly journals) subscriptions, with what’s left (10-20%) going to books. The subscription prices have gone up much faster than inflation (anywhere from 8-15% per year, depending on the vendor), while our budgets stay flat. We cut the monographs budget to keep our journal subscriptions current, and when that money runs out, we cut back on serials, too, which also hinders our ability to subscribe to new titles.

Now the Google Settlement encourages us to do the same thing with books.

I think that there is room in the world for print and electronic books to coexist peacefully. But our budgets aren't currently designed for the model set out in the Google Books Settlement, and given our budget situation, aren't likely to be anytime soon. Our book budgets are designed to buy the bulk of our individual books ONCE. Not to pay for access to those books each year (the way that we do for serials).

Our profession calls rising serials budgets a “crisis.” Encouraging us to convert our books budget model to the same unsustainable economic model that caused a library financial crisis in the first place seems rather counterintuitive.

In short: if we spend what's left of our meager book budgets (public or academic) on access to Google Books, that leaves even LESS for printed books by SFWA members, which will still remain in demand in the short term at the very least.

Last edited by [Lynne Thomas](#) on Thu Jan 21, 2010 1:18 pm, edited 2 times in total.

Mary Robinette Kowal



We have a question from Steven Popkes, one of our active members, who asks:

Quote:

Question: How do reprints get handled by the google settlement? For example, an out of print book is scanned and put on line. At a later date, a reprint of the book is contemplated. What happens to the book on line? What rights does an author have to reprint a book that is now on line?

Michael Capobianco



I believe the answer is that an author can remove his or her work from display uses at any time.

Charlie Stross



Quote:

Question: How do reprints get handled by the google settlement? For example, an out of print book is scanned and put on line. At a later date, a reprint of the book is contemplated. What happens to the book on line? What rights does an author have to reprint a book that is now on line?

This appears to be addressed in [clauses 31-35 of the FAQ](#). It is, regrettably, clear as mud; to my first reading it looks as if you can -- if you opt in -- control how and if Google displays your books. Here's the relevant bit:

Quote :

The Amended Settlement Agreement uses the term Commercially Available, which generally means that a Book is in-print. If a Book is not Commercially Available, that means, in general, that it is Out-of-Print. Google is authorized to make Display Uses and Non-Display Uses of each Book that is not Commercially Available for the term of the U.S. copyright for that Book UNLESS the Rightsholder directs Google not to do so or directs Google to remove the Book. See FAQ35. In contrast, there is no deadline to request exclusion as opposed to removal.

Google may not make any Display Uses of any Commercially Available Book UNLESS the Rightsholder of the Book authorizes Google to include the Book in such uses.

It's not immediately obvious to me how you notify Google that an out-of-print book has just gone back into print.

Mary Robinette Kowal



Andrew Burt asks:

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Is there any provision in the settlement to alter/update its terms?

Mary Robinette Kowal



A lot of Science Fiction and Fantasy writers are short story writers. There's been some confusion about how those are covered as "inserts" under the settlement. Do they really have to claim every instance where a short story is reprinted in an anthology?

Lou Anders



That's a good question. As the editor of nine anthologies, do I have a responsibility to contact every single contributor to every single book if I am the only one listed as the books "author" ? Yikes.

Charlie Stross



Mary Robinette Kowal wrote:

Andrew Burt asks:

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Is there any provision in the settlement to alter/update its terms?

This is not covered by [Google's FAQ](#), oddly enough. However: the settlement isn't

final yet and hasn't been approved by the court. There's a fairness hearing scheduled for February 18th. You may want to read questions 80-81 of the FAQ for more information.

Lynne Thomas



Mary Robinette Kowal wrote:

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It depends upon whether a short story counts as an "insert":

"The ASA [Amended Settlement Agreement] clarifies, and thereby arguably narrows, the definition of such "inserts." Under the original settlement, the insert had to "covered by a registration with the United States Copyright Office." The ASA clarifies this phrase by adding that the insert had to be registered as a standalone work or as part of another registered work from which it was excerpted. (ASA 1.75)

"In other words, if A included in his book an essay by B, and A filed a copyright registration for his book, B's essay is not an insert under the settlement unless B had registered the essay on a stand-alone basis or as part of B's own book of essays. If B's essay is not an insert, B is not entitled to separate compensation and Google does not have to honor his request to exclude his essay from displays of the book." [...] "Nonetheless, Google probably would honor such a request because the essay is not covered by the settlement and B could sue Google for infringement if it displayed the full text of the essay."

source: http://www.arl.org/bm~doc/guide_for_the..._part3.pdf

Last edited by [Lynne Thomas](#) on Thu Jan 21, 2010 1:31 pm, edited 1 time in total.

Michael Capobianco

Mary Robinette Kowal wrote:

Andrew Burt asks:



Quote:

Is there any provision in the settlement to alter/update its terms?

I saw a couple of places in the settlement where some things, especially regarding future types of commercial exploitation, could be modified; where the Registry was supposed to look at how things were going and modify them to improve on the the settlement defaults, but most of the terms can't be changed.

Michael Capobianco



According to most lawyers I've talked to, US published inserts are not part of the settlement unless they have been independently registered with the Copyright Office. If they're not part of it, the settlement is mum about how they're to be treated. Inserts published in the UK, Australia, and Canada do not have to be registered, and they are in the settlement.

My understanding is that the vast majority of short stories and essays written by SFWA members, for example, have not been independently registered, so they're covered only if they were originally published or reprinted in one of the four

Mary Robinette Kowal



I told you that I would only keep you for 90 minutes and you've all been wonderful.

I'd particularly like to thank to Paul Aiken for coming in and joining us. Though this is a contentious topic, it's important to remember that the Authors Guild had the balls to sue Google in the first place. Even if the settlement isn't perfect, if they hadn't stepped in, Google would have been scanning without any protests.

We'll wrap up by giving you a chance to post any closing remarks that you want to really make sure our audience hears. Then, I'll point them to a series of links that might be helpful in trying to make a decision about whether to opt-in or opt-out by January 28th.

Again, thank you all.

Paul Aiken

Oops. I see I've been replying as a "private message" to many posts.

Not sure how to quickly fix that.

Charlie Stross



No closing remarks from me, other than: read the [FAQ](#) for further information.

Thank you all, and good night.

Paul Aiken

I guess we'll get those re-posted.

For anyone whose questions weren't answered, we'll have a conference call that you can take part in. The sign up for that will appear tomorrow at our website <http://www.authorsguild.org>.

Paul Aiken

Thanks everyone. Hope it was helpful.

Mary Robinette Kowal

Paul Aiken wrote:

Oops. I see I've been replying as a "private message" to many posts.



Not sure how to quickly fix that.

Whoops! I can paste them in here afterwards so folks can read your replies. I know you have another meeting coming up.

And having you here was very helpful.

Lynne Thomas



Thanks for listening. It was an honor to be able to participate today.

Lou Anders



Thanks for inviting me to take part!

Paul Aiken

*Peter West wrote:
Paul Aiken wrote:*

The Book Rights Registry will be controlled solely by authors and publishers (not Google) and will charge an administrative fee to cover its costs.

I would like to ask for further clarification on the "administrative fee" for the Book Rights Registry. Could someone please explain to me a little more about this fee (amount, subscription-based or one-time)? Thank you!

*Cheers!
~ Peter West*

The fee will be a percentage and has to be reasonable. Exactly what it will be no one can say, until we know how much money is flowing through the Registry and what its expenses are. The Authors Registry charges a 5% fee, but pays out about \$2 million per year. The Book Rights Registry will be paying much larger amounts (by all accounts) so the fees may be different.

Paul Aiken

Charlie Stross wrote:

Andrew Burt wrote:

Is there any provision in the settlement to alter/update its terms?

This is not covered by Google's FAQ, oddly enough. However: the settlement isn't final yet and hasn't been approved by the court. There's a fairness hearing scheduled for February 18th. You may want to read questions 80-81 of the FAQ for more information.

Amending the settlement wouldn't be a simple process. However, nothing in the settlement prevents an author from taking advantage of new business models that might arise. Simply turn off uses under the settlement and enter into any deal one wants. If you want to enter into a non-exclusive agreement, you can leave the settlement uses on.

Michael Capobianco



The worst thing any author can do in regard to the settlement is nothing. You will lose your rights and your money. At least read Attachment A: Author-Publisher Procedures http://www.googlebooksettlement.com/r/view_settlement_agreement for yourself, and there are many good sources of information on the web. I recommend <http://www.laboratorium.net> as a handy clearing house of opinions both pro and con.

If you do decide to opt out, you must do so before January 28. The link is http://www.googlebooksettlement.com/r/enter_opt_out and it's relatively easy to do. You are not obligated to make list your books and inserts to opt out.

Thanks for attending, everyone, and I hope this has been helpful.

Paul Aiken

Charlie Stross wrote:

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Google may not make any Display Uses of any Commercially Available Book UNLESS the Rightsholder of the Book authorizes Google to include the Book in such uses.

It's not immediately obvious to me how you notify Google that an out-of-

print book has just gone back into print.

You would simply notify the Book Rights Registry on your rights management screen that your book is back in print.

Paul Aiken

Charlie Stross wrote:

Lynne Thomas wrote:

I'm a bit nervous, however, about the possibility that this "universal library" will not be very universal. Contrary to popular belief, not everyone in the United States has consistent internet access.

Also contrary to popular belief, this settlement affects a lot more than the United States -- in coming to a globally applicable settlement with the Authors Guild, Google have implicitly decided to extend US jurisdiction to copyrights worldwide (as in: they've decided that the GBS gives them global clearance to digitize books). It's interesting to note what the French courts think of this.

The settlement doesn't give Google global clearance to digitize books. We agree with the French court's decision, by the way. That's why we sued Google in the first place.

Paul Aiken

Michael Capobianco wrote:

Paul, I think one of the things you have underestimated is how important non-monetary considerations are to a lot of writers, and how they feel this has undermined their rights as an author. They want respect as well as money.

We said (through our lawsuit): Google you've infringed our rights, you have no rights to those scans. Through the settlement, authors get control of those scans and the right to earn money off of them. You have every right to choose to not

make money off of this settlement and opt out, but it's not in your economic interest.

These things happen in business all the time, especially with patents, another form of intellectual property. The patent holder sues an infringer, then winds up settling, giving a license to the infringer. This may, in some sense, be seen as rewarding the infringer, who can then make money off the license, but the patent holder wins, too. The rights of the intellectual property holder are vindicated.

The settlement is pragmatic and clearly in writers' economic interests.

Paul Aiken

Lynne Thomas wrote:

Paul Aiken wrote:

Not everyone has Internet access, it's true. But nearly every library does. So long as public libraries take advantage of the offer, every public library will have a terminal for public access to this database of out-of-print books.

Copyright law isn't being re-written, and Google certainly didn't do this by itself. The public benefits of this settlement are enormous.

I have great difficulty seeing the benefit of this settlement to either public or academic libraries. I fail to see enough oversight being built into the settlement to keep libraries from being price-gouged over time.

"Fully participating" libraries get sweetheart subscription deals (25 years for free in the case of Michigan's deal) in exchange for providing Google with access to their books for scanning. Thus, large research libraries with large collections and more resources are set even further apart from research libraries with smaller collections (like mine), which is not conducive to the equitable sharing of information that is often produced by publicly funded academics. Libraries are being tantalized with access to a large collection of books that will, over time, become prohibitively expensive to subscribe to if the history of this particular funding model is any indication. The one or two "free terminals" provided in the settlement will not be sufficient for any relatively large academic or public community; our users will expect us to subscribe for campus-wide or large urban system-wide access.

This settlement will likely end up doing to electronic books what making scholarly journals electronic has done to paper periodicals, which is to raise the prices so much that they become prohibitive, despite the purported intent to base pricing upon "what the market can reasonably bear," (also

one of the Settlement's pricing criteria). That understanding of "reasonable" is wildly skewed, and does not reflect the realities of library funding.

20 years ago, academic libraries spent from 50-80% (depending on the library) of their budgets on books, and the rest on serials (periodicals/scholarly journals). Now, most libraries spend 80-90% of their budgets on electronic serials (periodicals/scholarly journals) subscriptions, with what's left (10-20%) going to books. The subscription prices have gone up much faster than inflation (anywhere from 8-15% per year, depending on the vendor), while our budgets stay flat. We cut the monographs budget to keep our journal subscriptions current, and when that money runs out, we cut back on serials, too, which also hinders our ability to subscribe to new titles.

Now the Google Settlement encourages us to do the same thing with books.

I think that there is room in the world for print and electronic books to coexist peacefully. But our budgets aren't currently designed for the model set out in the Google Books Settlement, and given our budget situation, aren't likely to be anytime soon. Our book budgets are designed to buy the bulk of our individual books ONCE. Not to pay for access to those books each year (the way that we do for serials).

Our profession calls rising serials budgets a "crisis." Encouraging us to convert our books budget model to the same unsustainable economic model that caused a library financial crisis in the first place seems rather counterintuitive.

In short: if we spend what's left of our meager book budgets (public or academic) on access to Google Books, that leaves even LESS for printed books by SFWA members, which will still remain in demand in the short term at the very least.

We, of course, disagree. If serials had provided a free terminal in every public library building, and to every university, the economics of subscriptions would have been radically different.

You purchase physical books and have the continuous right to lend them out. The settlement doesn't change that. It just extends every library's collection to include a vast number of out-of-print books at no charge.

Paul Aiken

Michael Capobianco wrote:

I hope everyone in the audience will make a note that the deadline to opt out of the settlement is January 28, and, if you don't opt out, you're in, and subject to the rules of the settlement. There will be other chances to manage your books or remove them, but Jan. 28th is your last chance to tell the Authors Guild and Google that you want no part of this.

It's not us you're telling, it's the claims administrator. But, yes, you have the right to opt out. We think it's not in your interest to do so.

Lynne Thomas



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This settlement will likely end up doing to electronic books what making scholarly journals electronic has done to paper periodicals, which is to raise the prices so much that they become prohibitive, despite the purported intent to base pricing upon "what the market can reasonably bear," (also one of the Settlement's pricing criteria). That understanding of "reasonable" is wildly skewed, and does not reflect the realities of library funding.

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You purchase physical books and have the continuous right to lend them out. The settlement doesn't change that. It just extends every library's collection to include a vast number of out-of-print books at no charge.

Yes, on one terminal that has exceedingly limited download and printing access for patrons. With additional restrictions on electronic reserves, interlibrary loan, and other essential library functions that can be fulfilled with the paper copies of those same books.

It may be free, but it's not unlimited access by any means.

Mary Robinette Kowal



Thanks, Lynne, I was wondering if I should paste that in as well.

And, that's all, folks.

Thanks again for joining us. I encourage you to visit these links for more information about the settlement.

[Google Book Settlement website](#)

[The Google Book Settlement's FAQ](#)

[A two page overview of the Settlement by the Authors Guild, in pdf](#)

[The amended settlement, pdf](#)

[The Authors Guild](#)

[SFWA's official position on the Google Book Settlement](#)

[Open Book Alliance](#)

[The Public Index](#) has a very good overview and a series of links.

Again, thank you all. If anyone wants to continue the conversation, please feel free to hop over to [Post-panel Chatter](#).